

IN THE COURT OF APPEALS OF IOWA

No. 3-1189 / 13-1415
Filed January 23, 2014

**IN THE INTEREST OF N.B.,
Minor Child,**

L.B., Mother,
Appellant.

Appeal from the Iowa District Court for Warren County, Mark F. Schlenker,
District Associate Judge.

A mother appeals from a placement order in child in need of assistance
proceedings. **AFFIRMED.**

Steven E. Clarke of Clarke Law Office, West Des Moines, for appellate
mother.

K.B., Norwalk, father.

Thomas J. Miller, Attorney General, Bruce Kempkes, Assistant Attorney
General, John Criswell, County Attorney, and Tracie Sehnert, Assistant County
Attorney, for appellee State.

Karl Wolle of the Juvenile Public Defender's Office, Des Moines, for minor
child.

Considered by Tabor, P.J., Bower, J., and Mahan, S.J.*

*Senior judge assigned by order pursuant to Iowa Code section 602.9206 (2013).

MAHAN, S.J.

I. Background Facts & Proceedings.

Laura and Kenneth are the parents of N.B., who was born in 1998.¹ The child was removed from the mother's care on November 30, 2012, because she had used marijuana with N.B., who was then fourteen years old, on more than one occasion. N.B. was adjudicated to be a child in need of assistance (CINA) pursuant to Iowa Code section 232.2(6)(b), (c)(2), and (o) (2011). N.B. was placed in family foster care.

On May 31, 2013, the juvenile court ordered that N.B. be returned to Laura's care. He was removed again, however, on June 18, 2013, after testing positive for marijuana. There were also concerns that Laura had taken N.B. and other teenagers to a party where they had access to alcohol. N.B. was placed in shelter care, where he attempted to injure himself. He was subsequently moved to a residential program.

On August 15, 2013, Laura filed an application to modify N.B.'s placement, asking that he be returned to her care. A hearing was held August 20 and 21. The juvenile court determined N.B. should be placed at a Psychiatric Mental Institute for Children (PMIC). The court found this was in his best interests "due to the history of the need for psychological assistance, and the questions remaining about the suitability of the home safety and environment." The court found continued removal from the home was necessary to avoid imminent risk to the child's life or health. Laura appeals the juvenile court's order.

¹ The father did not participate in the placement hearing and is not a party to this appeal.

II. Standard of Review.

We review CINA proceedings de novo. *In re K.B.*, 753 N.W.2d 14, 15 (Iowa 2008). We review both the facts and the law and adjudicate rights anew. *In re K.N.*, 625 N.W.2d 731, 733 (Iowa 2001). While we are not bound by the factual findings of the juvenile court, we give them weight, especially when considering the credibility of witnesses. *In re D.D.*, 653 N.W.2d 359, 361 (Iowa 2002).

III. Merits.

A. Laura claims the juvenile court should not have placed N.B. at a PMIC. She contends he could be returned to her care and attend outpatient therapy for his mental health concerns and substance abuse. She asserts his behavior had improved while he was in a residential program and he no longer needs the high level of care afforded by a PMIC.

There was conflicting evidence presented at the placement hearing regarding the level of care needed for N.B. Dr. Kelli Hill, a psychologist, recommended outpatient therapy to address N.B.'s depression, anxiety, and obsessive-compulsive disorder. Dr. Rahul Bansal, a psychiatrist, also gave the opinion that N.B.'s needs could be addressed by outpatient treatment. Dr. Sasha Khosravi, a psychiatrist, recommended N.B. participate in a course of treatment at a PMIC to address his mood and behavior symptoms.

Additionally, the Iowa Department of Human Services (DHS) report to the court recommended that N.B. not be returned to the home at that time due to his mental health needs and Laura's lack of supervision. A psycho-social assessment by a social worker stated, "Due to the number of incidents of self

harm in the past six months and the mental health diagnosis that still needs addressing it is the recommendation at this time that [N.B.] receive residential PMIC level of care.”

The juvenile court considered all of this evidence and concluded it was in N.B.’s best interests to be placed in a PMIC. We agree with the juvenile court’s conclusion. The temporary return of N.B. to his mother’s care in May 2013 was not successful. It only lasted eighteen days. On the other hand, N.B. has made significant progress while in residential treatment. We believe N.B. needs more time to address his mental health and substance abuse problems. Furthermore, Laura had not shown she could provide an adequately stable and structured environment. We determine it would not be in N.B.’s best interests to be returned to his mother’s care at this time.

B. Laura claims the juvenile court improperly relied upon evidence that was not in the record in making its ruling. During the hearing she stated she had pled guilty to delivery of marijuana and would be sentenced soon. In addition to this offense, the juvenile court noted she had other pending criminal charges. Laura asserts the court should not have considered her additional criminal charges that had not been discussed during the hearing.

As noted above, our review is de novo. See *In re A.J.*, 821 N.W.2d 280, 282 (Iowa Ct. App. 2012). We review both the facts and the law, and adjudicate the parties’ rights anew. *In re A.M.H.*, 516 N.W.2d 867, 870 (Iowa 1994). In making our de novo review of the record we will consider the record presented by the parties before the juvenile court. See *In re C.M.*, 652 N.W.2d 204, 209 (Iowa

2002) (noting we rely on the petition, any response to the petition, the juvenile court record, and the hearing transcript).

We have reviewed said record de novo. We agree with the ruling of the juvenile court. We conclude that no prejudice resulted from any court statement about these additional criminal matters. See Iowa R. Evid. 5.103(a). This child clearly needs additional help. The State has shown by clear and convincing evidence that the best interests of the child would be served by this placement. We affirm the decision of the juvenile court.

AFFIRMED.